

Opinion

1955

October 11

NEW HAMPSHIRE LAW LIBRARY

SEP 22 1998

CONCORD, N.H.

Mr. James J. Barry, Commissioner  
Department of Public Welfare  
State House Annex  
Concord, New Hampshire

Dear Mr. Barry:

This is in reply to your letter of September 26, 1955 wherein you raised two questions respecting the recovery of assistance furnished to one Frank W. Olney, now deceased. The facts as contained in your letter are as follows: Mr. Olney received assistance from May 1942 through April 25, 1951, which was apparently the date of his death. He owned no real estate; the title to the property occupied by him and his wife being in her name. Subsequent to the effective date of chapter 173 of the Laws of 1949 which amended chapter 126, section 32 of the Revised Laws, liens were placed upon this property for assistance furnished Mr. Olney. Mrs. Olney was never a recipient of assistance from your department. Upon the death of Mrs. Olney the Town of Springfield paid her expenses of last illness and burial.

Your first question asks whether the State is entitled to reimbursement, by virtue of the lien created under Revised Laws, chapter 126, section 32 as amended by chapter 173, section 1 of the Laws of 1949 and placed upon the property of Mrs. Olney, for the total amount of assistance furnished to Mr. Olney. My answer to this question is in the negative.

A lien created by statute is limited in operation and extent by the terms of the statute. 33 Am.Jur., Liens, sec. 26. The pertinent part of said section 32 as amended reads as follows:

"The estate of every recipient, and the estate of his or her spouse, residing with said recipient, if any, owned severally or as joint tenants, shall be holden for all assistance granted to the recipient."

The effect of the amendment was to provide that the estate of the spouse of a recipient, living with the recipient, should be holden for the assistance furnished and created a lien upon such property. Nowhere does the section speak of retroactivity and, in accordance with the above requirement for the interpretation of statutory liens, it is my opinion that it is without retroactive effect. I do not hereby

C O B A

C O P Y

-2-

OFFICE OF ATTORNEY-GENERAL  
State of New Hampshire

Mr. James J. Barry, Commissioner

intend to express any opinion as to the legality of such a provision were it to be inserted in the section. It is clear, however, from a reading of the section that the lien upon the estate of the spouse is prospective only and her estate is holden for that assistance furnished subsequent to the date of its perfection.

You next inquire as to the priority of your claim with respect to the expenses paid by the Town of Springfield. Where a recipient has property himself the State has, at his death, a claim for the amount of assistance furnished junior only to the expenses of administration, burial and last sickness. Revised Laws, chapter 126, section 19 as amended by chapter 90, section 6 of the Laws of 1951. This claim may be secured by a lien upon his real estate. In the present case the fact situation is different as the lien is upon the property of the spouse of a recipient and the claim is being presented against the estate of the spouse.

As the lien attaches to the property from the date of perfection and holds the property for future assistance to the exclusion of other subsequent claims and liens, State v. Linnick, 99 N.H. 217, except as may be specified by statute as above, it would appear that in the present case the claim of the State would have preference over all other claims as said chapter 126 is silent as to preference of any claims with respect to the property of the spouse of a recipient holden by a proper lien. However, section 26, chapter 124 and section 19, chapter 125 both of the Revised Laws bear directly on the problem.

Said section 26 provides that towns may recover from the estates of persons assisted in like manner as counties under chapter 125, section 19 which in turn provides that assistance furnished within six years of death shall be a preferred claim after the payment of funeral, last sickness and administration expenses. The effect of this section is to give a town a priority comparable to that extended to the State under chapter 126 of the Revised Laws. Thus, it is my opinion that the town which furnished aid to the deceased spouse of a recipient is entitled to recover for the aid so furnished prior to the satisfaction of the claim of the State for assistance furnished to the recipient but not to the presently deceased spouse.

It is necessary to read together the provision of chapter 125 and the lien law and the conclusion reached here, I believe, is consistent with the overall legislative intent of recognizing some claims as being prior to one for assistance furnished by your department.

Very truly yours,

Richard C. Duncan  
Assistant Attorney General

RCD/T